HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 22404 OF 2006

Between:

Sri Chetan

..... Petitioner

AND

The Municipal Commissioner,
Uppal Kalan Municipality,
Uppal & another

.....Respondents

:: O R D E R ::

Counsel for the petitioner : Shri A.L. Raju

Dated: 01.11.2006

Per G.S.SINGHVI, CJ

In this petition, the petitioner has prayed for issue of a mandamus to respondent No.1 i.e. Municipal Commissioner, Uppal Kalan Municipality, Uppal to remove the alleged encroachment of public road made by respondent No.2 – Venkat Reddy.

In his affidavit, petitioner - Shri Chetan has averred that he is the owner of a part of land bearing Plot No.142 with house No.2-24-113/8/4 (part) situated at Laxminarayana Nagar, Uppal Village, Ranga Reddy District; that respondent No.2 is making attempts to grab the north east side road of his plot; that he has already closed the east south of the road by erecting a big Ganesh pandal and, that on an earlier occasion, respondent No.2 erected a wall on north west end of the road, but the same was demolished by the authorities of Uppal Kalan Municipality. He has further averred that despite the complaint made to the authorities of the Municipality, no action has been taken by them for removing the illegal structure erected by respondent No.2.

We have heard Shri A.L.Raju. In our opinion, the writ petition is liable to be dismissed because the petitioner has not satisfied the condition pre-requisite for issue of a mandamus i.e., notice of demand for justice. The requirement of serving a notice or of making a representation to the concerned public authority calling up it to enforce the provisions of law has been treated as mandatory in **Amrit Lal Berry v. Collector of Central Excise Central Revenue**[1]. The only exception to the rule of demand for justice and rejection (express or implied) thereof is where the matter requires emergent intervention by the Court. The present case does not fall in that category. Therefore, we decline to entertain the petitioner's prayer and dismiss the petition.

However, liberty is given to the petitioner to make a representation to Commissioner, Uppal Kalan Municipality, Uppal with the request to remove encroachment from the public land and demolish the unauthorized construction, if any made by respondent No.2 or any other person.

If the petitioner makes any such representation or serves notice of demand for justice, the officer concerned must take appropriate action in accordance with law. However, before ordering demolition of any structure, the officer concerned must comply with the relevant statutory provisions and the rules of natural justice.

As a sequel to dismissal of the main petition, W.P.M.P.No.28456 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

01.11.2006
ksld

---

[1] AIR 1975 Supreme Court 538